

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**TRISURA SPECIALTY INSURANCE
COMPANY**

Plaintiff,

vs.

**GPI CARRIERS, LLC and
MARTELL HOLMAN,**

Defendants.

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CASE NO. 4:24-cv-04300

JURY TRIAL DEMANDED

DEFENDANT MARTELL HOLMAN’S ANSWER AND COUNTER-CLAIM

COMES NOW, Defendant MARTELL HOLMAN (“Holman”) who files this Original Answer to Plaintiff TRISURA SPECIALTY INSURANCE’s (“Trisura”) Original Complaint and would show the Court as follows:

I. NATURE OF THE ACTION

1. Defendant Holman admits that Plaintiff Trisura seeks declaratory judgment pursuant to 28 U.S.C. §2201 and 2202. He is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 1, therefore, the allegations are denied.

2. Defendant Holman admits that Plaintiff Trisura seeks a declaratory judgment regarding the MCS-90 Endorsement, but denies the remaining allegations in paragraph 2.

3. Defendant Holman admits that Plaintiff Trisura seeks a declaratory judgment regarding the damages awarded by the state court Final Judgment, but denies that Plaintiff Trisura is entitled to declaratory judgment regarding these damages or that the Court has jurisdiction to make any determination regarding damages awarded in a state court Final Judgment because it constitutes an impermissible collateral attack on that Final Judgment and violates the *Rooker-Feldman* doctrine.

II. PARTIES

4. Defendant Holman admits that Plaintiff Trisura is a corporation, but he is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 4, therefore, the allegations are denied.

5. Defendant Holman admits that Defendant GPI Carriers, LLC (“GPI”) is a limited liability company in Webb County, Texas at 2935 Melville Loop, Laredo, Texas 78041, and may be served through its registered agent for service of process, Isreal Guzman III at the same address, but denies that GPI is currently in business as a trucking company because its authority to operate was revoked by the Federal Motor Carrier Safety Administration (FMCSA) on December 27, 2022.

U.S. Department of Transportation Federal Motor Carrier Safety Administration Licensing and Insurance Public					
Authority History					
US DOT:	3055102		Docket Number:	MC00051930	
Legal Name:	GPI CARRIERS LLC				
Sub	Auth Type	Original Action		Disposition	
	MOTOR PROPERTY COMMON CARRIER	GRANTED	11/13/2017	REVOKED	12/27/2022

[Carrier Details](#)
 [Active/Pending Insurance](#)
 [Rejected Insurance](#)
 [Insurance History](#)
 [Pending Application](#)
 [Revocation](#)

6. Admitted.

III. JURISDICTION AND VENUE

7. Admitted.

8. Defendant Holman admits that Plaintiff Trisura is a corporation, but he is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 8, therefore, the allegations are denied.

9. Admitted.

10. Admitted.

- 11. Denied.
- 12. Admitted.

IV. BACKGROUND AND SUMMARY

- 13. Admitted.
- 14. Admitted.
- 15. Admitted.
- 16. Admitted.

V. THE TRISURA POLICY

- 17. Admitted.

VI. CAUSE OF ACTION: DECLARATORY JUDGMENT

A. No Coverage: Driver Not Listed and Vehicle Not Scheduled

- 18. Admitted.
- 19. Admitted.
- 20. Admitted.

21. Defendant Holman admits that if the driver is not listed and the vehicle was not scheduled, then there is no coverage under the commercial automobile liability policy except for the MCS-90 Endorsement. Defendant Holman denies the remaining allegations in paragraph 21.

B. No Coverage: No Notice or Demand from Any Insured

22. Defendant Holman is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 22, therefore, the allegations are denied.

C. No Coverage: No Evidence to Potentially Trigger MCS-90 Endorsement

- 23. Admitted.

24. Defendant Holman admits that there was no specific allegation of “the transportation of property as a motor carrier in ‘interstate commerce’, in his state court pleadings,

but denies that it was necessary and further denies that the parameters of the MCS-90 Endorsement have not been met or that Plaintiff Trisura is not liable to Defendant Holman under the terms of the MCS-90 Endorsement. Defendant Holman denies the remaining allegations in paragraph 24.

25. Defendant Holman admits that Plaintiff Trisura is entitled to reimbursement from Defendant GPI, under the terms of the MCS-90 Endorsement and applicable law, for any payments that Trisura makes to Holman pursuant to the MCS-90 Endorsement. Defendant Holman denies the remaining allegations in paragraph 25.

26. Defendant Holman admits that Plaintiff Trisura is entitled to reimbursement from Defendant GPI, under the terms of the MCS-90 Endorsement and applicable law, for any payments that Trisura makes to Holman pursuant to the MCS-90 Endorsement. Defendant Holman denies the remaining allegations in paragraph 26.

D. No Coverage: Default Judgment

27. Defendant Holman admits that Plaintiff Trisura seeks a declaratory judgment regarding the damages awarded by the state court Final Judgment, but denies that Plaintiff Trisura is entitled to declaratory judgment regarding these damages or that the Court has jurisdiction to make any determination regarding damages awarded in a state court Final Judgment because it constitutes an impermissible collateral attack on that Final Judgment and violates the *Rooker-Feldman* doctrine. Defendant Holman denies the remaining allegations in paragraph 27.

VII. AFFIRMATIVE DEFENSES

28. Defendant Holman asserts the state court Final Judgment as an affirmative defense to Plaintiff Trisura's request for declaratory judgment regarding damages or a sufficiency of the evidence review by this Court, as any determination would constitute an impermissible collateral attack on a final judgment and the Court lacks jurisdiction to review any aspect of a final state court judgment under the *Rooker-Feldman* doctrine.

VIII. COUNTER-CLAIMS

A. COUNT 1: BREACH OF CONTRACT

29. Defendant/Counter-Plaintiff Martell Holman (“Holman”) requests that the Court take judicial notice of its file in this case.

30. Plaintiff/Counter-Defendant Trisura Specialty Insurance Company (“Trisura”) issued policy number TTT-66-2-201729 to first named insured GPI Carriers LLC (“GPI”) with a policy period of November 5, 2020 to November 5, 2021 and a limit of \$1 million for commercial automobile liability. The policy was amended to include an MCS-90 Endorsement with a limit of \$1 million.

FORM MCS-90 Revised 3/31/2020	OMB No.: 2126-0008 Expiration: 3/31/2021
<div style="border: 1px solid black; padding: 2px; display: inline-block;"> USDOT Number: 3055102 Date Received: 11/03/2020 </div>	
<p>A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.</p>	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> United States Department of Transportation Federal Motor Carrier Safety Administration </div>	
Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 <h1 style="margin: 0;">FORM MCS-90</h1>	
<p>Issued to GPI CARRIERS LLC of TX <small>(Motor Carrier name) (Motor Carrier state or province)</small></p> <p>Dated at 12:01 A.M. on this 05th day of Nov, 2020</p> <p>Amending Policy Number: TTT-66-2-201729 Effective Date: 11/05/2020</p> <p>Name of Insurance Company: Trisura Specialty Insurance Company</p> <p style="text-align: right;"><i>Paul R. Kuperberg</i></p> <p style="text-align: center;">Countersigned by: _____ <small>(authorized company representative)</small></p>	
<p>The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown (check only one):</p> <p><input checked="" type="checkbox"/> This insurance is primary and the company shall not be liable for amounts in excess of \$ 1,000,000 CSL for each accident.</p> <p><input type="checkbox"/> This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.</p> <p>Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: 1-512-528-5324.</p> <p>Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).</p>	

FORM MCS-90 Revised 3/31/2020

OMB No.: 2126-0008 Expiration: 3/31/2021

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon,

or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

31. On May 13, 2024, Holman obtained a Final Judgment against GPI Carriers LLC from the 234th Judicial District Court of Harris County, Texas.

32. The judgment awarded damages to Holman against GPI in excess of \$1 million, arising out of a motor vehicle collision that occurred on March 23, 2021 involving a commercial motor vehicle operated by GPI.

33. Holman's Final Judgment went unpaid by GPI.

34. On August 13, 2024, Holman sent a written demand to Trisura to pay the Final Judgment, pursuant to the terms of the MCS-90 Endorsement attached to the commercial automobile liability policy issued to GPI by Trisura.

35. Instead of paying the \$1 million policy limits under the MCS-90 Endorsement to Holman in satisfaction of the Final Judgment when liability was reasonably clear, Trisura filed a restricted appeal with the Texas Fourteenth Court of Appeals seeking to overturn the judgment. The restricted appeal is still pending, although the lawyer hired by Trisura has yet to file an opening brief.

36. Trisura then filed this declaratory judgment action against Holman in federal court seeking a declaration that it is not liable to pay the Final Judgment under the terms of the MCS-90 Endorsement, by alleging that there is no evidence that the tractor trailer GPI was operating at the time of motor vehicle collision on March 23, 2021 was transporting property in interstate commerce.

37. Holman alleges that Trisura was well aware that there was no insurance coverage for the incident under the commercial automobile liability policy issued to GPI by Trisura because Trisura conducted an investigation which determined that the driver was not listed and the vehicle was not scheduled under the policy, therefore only the MCS-90 Endorsement would potentially apply.

38. Holman alleges that Trisura was aware that the MCS-90 Endorsement was applicable because Trisura's investigation also revealed that the GPI tractor trailer was transporting property in interstate commerce at the time of the collision with Holman.

39. Indeed, the bill of lading for the trip indicates that the shipper had arranged for over 35,475 pounds of toothpaste and other products to be transported from a Colgate Palmolive factory in Mexico to the Colgate Palmolive Company located at 2501 Rock House Rd., Lithia Springs, GA 30122 by GPI.

Ravisa Brokerage LLC
13485 S Unitec Dr
Laredo, TX 78045

Date: 03/16/2021		Bill of Lading - Short Form - Not Negotiable		Page 1 of 1	
Ship From		Bill of Lading Number: 97601245810			
Name: COLGATE PALMOLIVE S.A. DE C.V. Address: AV. BICENTENARIO 374 City/State/Zip: SAN JOSE ITURBIDE, GUANAJUATO SID No.: MEXICO 37980					
Ship To		Carrier: TRANSPACE (BROKER)			
Name: COLGATE-PALMOLIVE COMPANY Address: 2501 ROCK HOUSE RD City/State/Zip: LITHIA SPRINGS, GA 30122 CID No.:		Trailer Number: 51228 Serial Number(s): <i>me</i>			
Third Party Freight Charges Bill to:		SPAC:			
Name: Address: City/State/Zip:		Pro Number: <i>live # 78</i>			
Special Instructions: <i>Seal # 301312</i> <i>Trailer # 03</i>		Freight Charge Terms: (Freight charges are prepaid unless marked otherwise) Prepaid: <input checked="" type="checkbox"/> Collect: <input type="checkbox"/> 3 Party: <input type="checkbox"/> <input type="checkbox"/> (check box): Master bill of lading with attached underlying bills of lading.			
Customer Order Information					
Customer Order No.		No. Pack-ages	Weight	Pallet/Slip (circle one)	Additional Shipper Information
Invoice #: A-0219708				Y N	
D.O. #: 2456836712				Y N	
Group No.: 8000288803				Y N	
Seal No.: 10546-12205				Y N	
Grand Total					
Carrier Information					
Handling Unit		Package		LTL Only	
Qty	Type	Qty	Type	Weight	HM (X)
29	PLT	3,162	CAS	9,682	KG
		1,920	CAS	6,409	KG
29		5,082		16,091	KG
Commodity Description					
Commodities requiring special or additional care or attention in handling or stowing must be so marked and packaged as to ensure safe transportation with ordinary care. See Section 2(a) of NMFC item 350					
06952A BASE GFR 6Z CS MU 3PK					
06304A ISBW 18F 53Z ML CS SP BLACK MINT					
<div style="text-align: right;"> <i>Accepted</i> <i>By [Signature]</i> <i>3/16/25</i> </div>					
Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows: * The agreed or declared value of the property is specifically stated by the shipper to be not exceeding _____ per _____					
COD Amount \$ _____ Free terms: Collect _____, Prepaid _____, Customer check acceptable _____					
Note Liability limitation for loss or damage is this shipment may be applicable. See 49 USC § 14706(c)(1)(A) and (B).					
Received, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates classifications and rules that have been established by the carrier and are available to the shipper, on request, and to all applicable state and federal regulations.					
Shipper Signature/Date: <small>This is to certify that the above named materials are properly classified, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the DOT</small>		Trailer Loaded: By shipper By driver		Freight Counted: By shipper By driver/pallets sold to contain By driver/pieces	
Carrier Signature/Pickup Date <small>Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the DOT emergency response guidebook or equivalent documentation in the vehicle. Property described above is received in good order, except as noted.</small>					

40. According to the Fifth Circuit, the MCS-90 Endorsement “creates a suretyship, which obligates an insurer to pay certain judgments against the insured arising from interstate commerce activities, even though the insurance contract would have otherwise excluded coverage.” *Canal Ins. Co. v. Coleman*, 625 F.3d 244, 247 (5th Cir. 2010) (citing *Minter v. Great Am. Ins. Co. of N.Y.*, 423 F.3d 460, 470 (5th Cir. 2005)).

41. Trisura has failed to pay the MCS-90 Endorsement policy limits to Holman upon demand in satisfaction of the Final Judgment Holman obtained against GPI.

B. COUNT 2: BAD FAITH/BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

42. Holman adopts by reference the facts alleged above.

43. Holman alleges that Trisura denied payment of the \$1 million policy limits due to him under the MCS-90 Endorsement in the policy issued to GPI by Trisura when it knew or should have known that liability was reasonably clear.

44. Holman alleges that Trisura knew from its initial investigation of the incident in 2021 that: (1) there was no coverage under the commercial automobile liability issued to GPI by Trisura because the driver was not listed and the vehicle was not scheduled, and (2) the GPI tractor trailer involved in the incident was transporting property in interstate commerce, such that the MCS-90 Endorsement might potentially be applicable.

45. Holman alleges that when he obtained the Final Judgment against GPI and forwarded it to Trisura on August 13, 2024, Trisura’s liability to pay the \$1 million policy limits under the MCS-90 Endorsement became reasonably clear, but Trisura delayed and/or denied payment.

46. Holman alleges that when Trisura received his demand letter on August 13, 2024 requesting that Trisura pay the Final Judgment, Trisura was aware that all conditions precedent to payment of the policy limits of the MCS-90 Endorsement had been met, but willfully refused to

pay the \$1 million policy limits and instituted frivolous litigation against Holman in an attempt to avoid paying the policy limits.

IX. DAMAGES

47. As a proximate result of Counter-Defendant Trisura's conduct alleged above, Counter-Plaintiff Holman has sustained damages in the form of the \$1 million policy proceeds due him under the MCS-90 Endorsement, attorney's fees that he has incurred to defend himself in the frivolous litigations filed by Trisura and to prosecute his claims, and mental anguish damages.

48. Pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001, *et seq.*, Holman is entitled to recover attorney's fees for breach of contract.

49. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.001, *et seq.*, Holman is entitled to recover attorney's fees in this declaratory judgment action.

X. CONDITIONS PRECEDENT

50. Holman alleges that all conditions precedent have been performed or have occurred.

XI. EXEMPLARY DAMAGES

51. Holman adopts by reference the facts alleged above.

52. Holman alleges that the Trisura's conduct involved acts and/or omissions which, when viewed objectively from the Trisura's standpoint at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Trisura had actual, subjective awareness of the risk involved, but nevertheless preceded with conscious indifference to the rights, safety, and welfare of others. Accordingly, the Trisura's actions constitute gross negligence and Holman is therefore entitled to an award of exemplary damages.

53. Alternatively, Holman alleges that Trisura's conduct in denying payment of the MCS-90 Endorsement policy limits when it knew or should have known liability was reasonably clear was due to malice, as that term is defined by Texas law, and Holman is therefore entitled to an award of exemplary damages.

XII. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

54. Holman seeks pre- and post-judgment interest in the maximum amount allowed by law.

PRAYER

WHEREFORE PREMISES CONSIDERED, Holman requests that the Court render judgment that Trisura take nothing on its claims against Holman, dismiss Trisura's suit with prejudice, award attorney's fees on Trisura's declaratory judgment claim, assess costs against Trisura, and that Holman recover judgment from Trisura of the \$1 million policy limits under the MCS-90 Endorsement, his actual damages in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest, post-judgment interest, attorney's fees, costs of suit, and such other and further relief to which he may show herself to be justly entitled.

Respectfully submitted,

THE GOURRIER LAW FIRM, PLLC

By: /s/ Joseph M. Gourrier.

JOSEPH M. GOURRIER *Attorney-in-charge*

Texas State Bar No. 24007258

Federal Bar No. 24069

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ATTORNEY FOR DEFENDANT/

COUNTER-PLAINTIFF MARTELL HOLMAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure via U.S. Mail, certified, return receipt requested, CM/ECF, email, and/or facsimile, on this 4th day of February, 2025.

Teresa Bohne BOHNE INSURANCE LAW, PLLC 9655 Wharf Road #123 Coppell, Texas 75019 bohneinsurancelaw@gmail.com (214) 725-3826 <i>Attorney for Plaintiff/Counter-Defendant</i> <i>Trisura Specialty Insurance Company</i>	Eduardo Romero Eduardo Romero, PLLC 201 W. Del Mar Blvd., Suite 15 Laredo, Texas 78041 er@romeroplhc.com (956) 727-2402 (956) 727-2404 (fax) <i>Attorney for Defendant GPI Carriers LLC</i>
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By: /s/ Joseph M. Gourrier.
Joseph M. Gourrier